

**TITLE 37
INSURANCE
PART XI CHAPTER 27: EMERGENCY RULE 17**

**SUSPENSION OF CERTAIN STATUTES AND REGULATIONS
REGARDING HEALTH INSURANCE
AND RELATED PROVISIONS REGARDING
ANY AND ALL HEALTH INSURANCE MATTERS AFFECTING INSURED IN
LOUISIANA CAUSED BY HURRICANE KATRINA**

TO: All Health Insurance Issuers, Health Maintenance Organizations, Preferred Provider Organizations, Managed Care Organizations, Third Party Administrators and any and all other health insurance entities doing business in Louisiana and/or regulated by the Commissioner of Insurance pursuant to the Louisiana Insurance Code

Emergency Rule 17 is issued pursuant to the plenary authority of the Commissioner of Insurance for the state of Louisiana, including, but not limited to, the following: Proclamation No. 48 KBB 2005 issued on August 26, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency; Executive Order No. KBB 2005 - 40 issued September 19, 2005 by Governor Kathleen Babineaux Blanco transferring authority over any and all insurance matters to Commissioner of Insurance J. Robert Wooley (Commissioner); LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

On August 26, 2005, Governor Kathleen Babineaux Blanco declared a State of Emergency within the state of Louisiana in response to the expected landfall of Hurricane Katrina. As a result of the hurricane's landfall, Hurricane Katrina caused extensive power outages and massive flooding that destroyed many homes and impacted the livelihood of the citizens of Louisiana.

Thousands of Louisiana citizens have suffered damages due to Hurricane Katrina. In some places, it could be months before electricity is restored. The homes of many Louisiana citizens were destroyed precluding habitation and the delivery of mail. This disruption has affected the ability of these citizens to pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance-related matters. Hurricane Katrina has created a mass disruption to the normalcy previously enjoyed by Louisianians and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The Commissioner will be hindered in the proper performance of his duties and responsibilities regarding this State of Emergency without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of health insurance subject to the Louisiana Insurance Code.

In light of this, I hereby issue Emergency Rule 17 to any and all health insurance issuers, Health Maintenance Organizations (hereinafter HMOs), Preferred Provider Organizations (hereinafter PPOs), Managed Care Organizations (hereinafter MCOs), Third Party Administrators (TPAs) and any other health insurance entities doing business in Louisiana and/or regulated by the Commissioner pursuant to the Louisiana Insurance Code regarding any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance, and any and all other types of health insurance regulated by the Louisiana Insurance Code.

Emergency Rule 17 is applicable to insureds, as defined in Section 17.1, from the following seven (7) primary parishes: **Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa, and Washington.** Emergency Rule 17 is also applicable to insureds, as defined in Section 17.1, from the following seven (7) secondary parishes: **Lafourche, Livingston, St. Charles, St. James, St. John the Baptist, St. Mary and Terrebonne.** The zip codes applicable to these seven (7) primary parishes include, but may not be limited to, the list identified as "Hurricane Katrina Seven Primary Parish Zip Code List" found on the official Louisiana Department of Insurance Web site at www.ldi.state.la.us. The zip codes applicable to the seven (7) secondary parishes include, but may not be limited to, the list identified as "Hurricane Katrina Seven Secondary Parish Zip Code List" found on the official Louisiana Department of Insurance Web site at www.ldi.state.la.us. Insureds shall include, but not be limited to, any and all policyholders, members, subscribers and certificate holders.

In the ordinary course of business, health insurance issuers, HMOs, PPOs, MCOs, TPAs and any and all other health insurance entities doing business in Louisiana and/or regulated by the Commissioner pursuant to the Louisiana Insurance Code regarding any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability insurance, short-term care insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code, are subject to certain requirements with regard to health insurance matters affecting insured citizens in Louisiana. Hurricane Katrina has produced a disruption in the health insurance industry. Thus, many of the insureds in the seven (7) parishes referenced above are currently unable to timely act or respond to their health insurance needs. Additionally, some insureds with policies in force on August 26, 2005, who wish to make timely

premium payments, are also prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage and/or potentially uninsured. Emergency Rule 17 provides emergency relief to the insureds of Louisiana affected by Hurricane Katrina and its aftermath so that these insureds will be insured and their coverage will continue under those policies that were in effect as of 12:01 a.m. on August 26, 2005.

Accordingly, IT IS HEREBY ORDERED:

17.1 The benefits, entitlements and protections of Emergency Rule 17 shall be applicable to insureds who, as of 12:01 a.m. on August 26, 2005 had a policy or contract for any of the types of insurance enumerated in Section 17.2, and meet one of the following criteria:

- A. Any person who, as of August 26, 2005, resided in one of the following seven (7) primary parishes: Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa and Washington. The zip code for these seven (7) primary parishes is on the list identified as "Hurricane Katrina Seven Primary Parish Zip Code List" found on the official Louisiana Department of Insurance Web site at www.ldi.state.la.us.
- B. Any person whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one of the seven (7) primary parishes enumerated in Section 17.1.A shall be eligible to be defined as an insured if said person verifies such employment status by written documentation to his insurer. No insurer shall unreasonably withhold eligibility to an insured upon receipt of such written documentation.
- C. Any person who, as of August 26, 2005, resided in one of the following seven (7) secondary parishes: Lafourche, Livingston, St. Charles, St. James, St. John the Baptist, St. Mary and Terrebonne. However any such person shall only be eligible to be defined as an insured if said person obtains written documentation from either the Chief Executive Officer of the applicable parish of the person or the United States Postal Service that said person incurred an interruption of mail service after August 26, 2005. The zip code for these seven (7) secondary parishes is on the list identified as "Hurricane Katrina Seven Secondary Parish Zip Code List" found on the official Louisiana Department of Insurance internet Web site at www.ldi.state.la.us.
- D. Nothing in Emergency Rule 17 shall preclude an insurer from voluntarily applying the provisions of Emergency Rule 17 relating to cancellation, nonrenewal and nonreinstatement to any other person who is an insured and who resides in any parish other than the parishes set forth in Section 17.1.A or 17.1.C.

- 17.2 Emergency Rule 17 shall apply to any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance.
- 17.3 All health insurance issuers and HMOs with insureds in the parishes enumerated in Section 17.1 shall waive any and all restrictions relative to out-of-network access to health care services. This shall include, but not be limited to, HMOs, PPOs and MCOs. To avoid delays in accessing care, all health insurance issuers, HMOs, PPOs and MCOs shall waive requirements for medical certifications or pre-certifications, referrals, medical necessity reviews and notification of hospital admissions. The right of health insurance issuers, HMOs, PPOs and MCOs to conduct retrospective medical necessity reviews and retrospectively deny any and all claims is hereby suspended for non-elective health care services. Additionally, the right of health insurance issuers, HMOs, PPOs and MCOs to recoup or offset with regard to any and all claims for non-elective health care services is hereby suspended. Non-elective health care services are those that are urgent, emergent, or necessary in order to not place the health of the insured at risk. Any and all claims subject to Section 17.3 shall not be applicable to elective health care services, cosmetic health care services or non-covered services.
- 17.4 When the health insurance issuer, HMO, PPO or MCO receives the premium due, the health insurance issuer, HMO, PPO and MCO shall be obligated to pay a claim at either billed charges, or the higher of the non-participating rate/allowance or the contracted reimbursement rate. Once the health insurance issuer or HMO selects one of the options above, the health insurance issuer or HMO shall reimburse said claim at the highest benefit level in the policy or the highest percentage in the policy. The purpose and intent is to minimize the insured's out-of-pocket expense. The insured shall be held harmless and indemnified by the health insurance issuers, HMOs, PPOs and MCOs for any out of pocket expense, except for any applicable co-payments, deductibles or co-insurance. All health care professionals and health care providers rendering services to an insured from the parishes enumerated in Section 17.1 shall comply with the Health Care Consumer Billing and Protection Act pursuant to LSA R.S. 22:250.41, *et seq.* Nothing in Section 17.4 shall be construed to require health insurance issuers, HMOs, PPOs or MCOs to pay a claim submitted by a participating health care provider or health care professional at a rate or allowance that is higher than the applicable contracted reimbursement rate or allowance.
- 17.5 All health insurance issuers and HMOs shall maintain compliance with LSA R.S. 22:250.1, *et seq.*, titled Assuring Portability, Availability and Renewability of Health Insurance Coverage, and any applicable federal law.

- 17.6 All cancellation, termination, nonrenewal and nonreinstatement provisions, including, but not limited to, LSA R.S. 22:250.7, 22:250.13, 22:215.9, 22:636.F and 22:2027 are hereby suspended. Additionally, all provisions of Emergency Rule 15 relating to notice of cancellation, termination, nonrenewal and nonreinstatement are incorporated herein by reference as if set forth herein *in extenso*.
- 17.7 Any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code that are subject to renewal between August 26, 2005 and January 1, 2006 are suspended and shall be renewed effective January 1, 2006, and any rate increases that were to take effect between August 26, 2005 and January 1, 2006 are suspended and shall be deferred until January 1, 2006. All types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code in effect at 12:01 a.m. on August 26, 2005 shall continue in full force and effect until January 1, 2006 at the previously established premium.
- 17.8 All claims notification procedures, including, but not limited to, LSA R.S. 22:213.A.(3) through (5), Regulation 33, Regulation 74 and Regulation 77, are suspended.
- 17.9 All laws relating to timely payment are suspended and, in furtherance thereof, the following rules shall apply to timely payment:
- A. Medical Care or Services – LSA R.S. 22:250.32 through 34 and Regulation 74 (Sections 6007 through 6011)
- (1) The Commissioner hereby suspends the forty-five (45) day time limit for payment of claims for non-electronic claims submission until further notice. (See LSA R.S. 22:250.32 and the penalty provisions of LSA R.S. 22:250.32.C.)
- (2) The Commissioner hereby suspends the twenty-five (25) day time limit for payment of claims for electronic claims submission until further notice. (See LSA R.S. 22:250.33 and the penalty provisions of LSA R.S. 22:250.33.C.)
- (3) The Commissioner hereby suspends the thirty day (30) time limit for payment of claims for insurers who have elected to utilize a

thirty day payment standard for compliance until further notice.
(See LSA R.S. 22:250.34 and the penalty provisions of LSA R.S. 22:250.32C and 22:250.33.C.)

- (4) Once a health insurance issuer receives the premium payment from the insured, all pending claims shall be processed and adjudicated. The health insurance issuer shall notify the health care provider that the claim is no longer pending and is being processed and adjudicated for payment. Furthermore, the suspension of the time limit for the payment of electronic and non-electronic claims will remain in effect until the present State of Emergency, or any subsequent State of Emergency, related to Hurricane Katrina or its aftermath has been lifted by Governor Kathleen Babineaux Blanco.
 - (a) Accordingly, pursuant to LSA R.S. 22:250.32, the forty-five (45) day time limit for payment for non-electronic claims and the penalty provisions of LSA R.S. 22:250.32.C shall be reinstated upon the payment of the premium by the insured.
 - (b) Accordingly, pursuant to LSA R.S. 22:250.33, the twenty-five (25) day time limit for payment of claims for electronic claims and the penalty provisions LSA R.S. 22:250.33.C shall be reinstated upon the payment of the premium by the insured.
 - (c) Accordingly, pursuant to LSA R.S. 22:250.34, the thirty (30) day time limit for payment for non-electronic claims and the penalty provisions of LSA R.S. 22:250.32.C and 22:250.33.C shall be reinstated upon the payment of the premium by the insured.

B. Pharmacy Care or Services – LSA R.S. 22:250:53 through 57.

- (1) The Commissioner hereby suspends the forty-five (45) day time limit for payment of pharmaceutical claims for non-electronic claims submission until further notice. See LSA R.S. 22:250.53 and the penalty provisions of LSA R.S. 22:250.53.C.
- (2) The Commissioner hereby suspends the fifteen (15) day time limit for payment of pharmaceutical claims for electronic claims submission until further notice. Furthermore, this suspension is applicable to Act 209 of the 2005 Regular Legislative Session. See LSA R.S. 22:250.54 and the penalty provisions of LSA R.S. 22:250.54.C.

- (3) The Commissioner hereby suspends the thirty (30) day time limit for payment of pharmaceutical claims for insurers who have elected to utilize a thirty day payment standard for compliance until further notice. See LSA R.S. 22:250.56 and the penalty provisions of LSA R.S. 22:250.53.C and 22:250.54.C.
- (4) Once a health insurance issuer receives the premium payment from the insured, all pending pharmacy claims shall be processed and adjudicated. The health insurance issuer shall notify the health care provider that the claim is no longer pending and is being processed and adjudicated for payment. Furthermore, the suspension of the time limit for the payment of electronic and non-electronic claims will automatically be lifted and reinstated.
 - (a) Accordingly, pursuant to LSA R.S. 22:250.53, the forty-five (45) day time limit for payment for non-electronic claims and the penalty provisions of LSA R.S. 22:250.53.C shall be reinstated upon the payment of the premium by the insured.
 - (b) Accordingly, pursuant to LSA R.S. 22:250.54, the twenty-five (25) day time limit for payment of claims for electronic claims and the penalty provisions LSA R.S. 22:250.54.C shall be reinstated upon the payment of the premium by the insured.
 - (c) Accordingly, pursuant to LSA R.S. 22:250.56, the thirty (30) day time limit for payment for non-electronic claims and the penalty provisions of LSA R.S. 22:250.53.C and 22:250.54.C shall be reinstated upon the payment of the premium by the insured.
- (5) The Commissioner hereby suspends the right of health insurance issuers and HMOs from denying, pending or rejecting a claim from any pharmacists or pharmacy for a thirty (30) day supply of prescription medications, regardless of the date of the last refill. In furtherance of this suspension, health insurance issuers and HMOs shall pay all such claims for reimbursement submitted by a pharmacist or pharmacy.
- (6) The Commissioner hereby suspends any and all precertification or step-therapy procedures in order to fill a prescription. This authorization shall be for a thirty (30) day supply.
- (7) The Commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on

replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

- (8) All health insurance issuers, HMOs, PPOs and MCOs shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

17.10 In the event health insurance issuers, HMOs, PPOs and MCOs pend a claim(s), as allowed pursuant Emergency Rule 17, and is subsequently entitled to cancel or terminate a policy for non-payment of premium, health insurance issuers, HMOs, PPOs and MCOs shall pay those claims to the health care providers or health care professionals at the following rate or allowance:

- A. For contracted health care providers or health care professionals, fifty percent (50%) of the contracted reimbursement rate.
- B. For non-contracted health care providers or health care professionals, fifty percent (50%) of the non-participating rate or allowance.
- C. With regard to claims submitted pursuant to Section 17.10, when the underlying policy is cancelled or terminated for non-payment of premium, health insurance issuers, HMOs, PPOs and MCOs shall be allowed to conduct medical necessity reviews on claims related to non-elective services. Non-elective services are those services that are emergent, urgent, or necessary in order to not place the health of the insured at risk.
- D. With regard to any and all claims paid by health insurance issuers, HMOs, PPOs and MCOs pursuant to the requirements of Section 17.10, the provisions of LSA R.S. 22:250.38 and 22:250.59 are hereby suspended and recoupment is prohibited.

17.11 The Commissioner hereby suspends physician credentialing pursuant to LSA R.S. 22:11.1 such that there are no credentialing requirements with regard to any and all licensed physicians who provide medical services to insureds from the parishes referenced in Section 17.1.

17.12 Payment of Medicare Supplement Premiums- LSA. R.S. 22:224.K

- A. The Commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to LSA R.S. 22:224.K.
- B. In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods during this State of Emergency or

any subsequent State of Emergency including, but not be limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods.

- 17.13 The Commissioner hereby suspends any and all cancellations occasioned by the inability of an insured, or his representative, from complying with any policy provisions. In furtherance of this suspension, a cancellation or nonrenewal shall not occur prior to the expiration of the State of Emergency or any subsequent State of Emergency related to Hurricane Katrina, unless upon the documented written request or written concurrence of the insured.
- 17.14 Emergency Rule 17 shall not relieve an insured who has a claim caused by Hurricane Katrina, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim.
- 17.15 The Commissioner hereby suspends the imposition of any interest, penalty or other charge and declares that no interest, penalty or other charge shall accrue or be assessed against any insured as the result of the suspensions ordered herein.
- 17.16 The Commissioner hereby suspends LSA R.S. 22:215.13. In furtherance thereof, a health insurance issuer who has issued a group health insurance policy shall provide to all members or certificate holders under said group policy the option for the continuation of coverage, which said option shall begin on the day after the Governor lifts the State of Emergency presently in effect, or any renewal thereof. Section 17.16 is only applicable in those situations where the employer to whom the group policy had been issued remains in business and continues to offer said group health insurance to active employees at any time between August 26, 2005 and the lifting of the State of Emergency by the Governor.
- 17.17 Notwithstanding any other provision contained herein, the Commissioner may exempt any insurer from compliance with Emergency Rule 17 upon written request by the health insurance issuer if the Commissioner determines that compliance with Emergency Rule 17 may be reasonably expected to result in said insurer being subject to undue hardship, impairment or insolvency.
- 17.18 The provisions of Emergency Rule 17 shall not apply to any new policies of insurance for the types of health insurance enumerated in Emergency Rule 17 if said new health insurance policy was issued on or after 12:01 a.m. August 26, 2005.
- 17.19 The provisions of Emergency Rule 17 shall not prevent health insurance issuers or HMOs from cancelling or terminating an insured based solely on fraud or material misrepresentation on the part of the insured.

- 17.20 The provisions of Emergency Rule 17 shall be liberally construed to effectuate the intent and purpose expressed herein and to afford maximum consumer protection for the insureds of Louisiana.
- 17.21 The Commissioner retains the sole authority to enforce violations of Emergency Rule 17. Accordingly, any insurer, HMOs, PPOs and MCOs, or other entity doing business in Louisiana and/or regulated by the Commissioner who violates any provision of Emergency Rule 17 shall be subject to prosecution by the Commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the LSA R.S. 22:250.41, et seq., 22:1211, et seq., and specifically including, but not limited to, LSA R.S. 22:1214(7), (12) and (14). Additionally, the penalty provisions set forth in LSA R.S. 22:1217 shall be applicable. These provisions include penalties of \$1,000.00 for each separate act, or \$25,000.00 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 17, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license. Additionally, LSA R.S. 22:1220, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the sole enforcement authority of the Commissioner. This law sets forth penalties and exemplary damages which shall be enforceable by the Commissioner for any violation of Emergency Rule 17. Finally, the Commissioner reserves the sole right to make the determination regarding whether any violator shall be subject to any and all other applicable civil and criminal sanctions for violations of Emergency Rule 17.
- 17.22 The Commissioner reserves the right to amend, modify, alter or rescind all or any portion of Emergency Rule 17.
- 17.23 If any section or provision of Emergency Rule that is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 17, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.
- 17.24 Emergency Rule 17 shall become effective at 12:01 a.m. on August 26, 2005 and shall continue in full force and effect for the duration of the present State of Emergency proclaimed by Governor Kathleen Babineaux Blanco, or any subsequent State of Emergency, with regard to Hurricane Katrina or its aftermath.

Baton Rouge, Louisiana, this 20th day of September, 2005.

J. Robert Wooley
Commissioner of Insurance